

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

LAJAZZ A. SMITH,
Plaintiff,

v.

L. VALENCIA,
Defendant.

Case No. [16-cv-06577-KAW](#) (PR)

**ORDER SERVING COGNIZABLE
CLAIM**

Plaintiff Lajazz Smith, a state prisoner incarcerated at Salinas Valley State Prison, has filed a *pro se* civil rights action pursuant to 42 U.S.C. § 1983, alleging the violation of her constitutional rights by Correctional Officer L. Valencia. Plaintiff has consented to the jurisdiction of the undersigned United States Magistrate Judge over this action. Plaintiff's motion for leave to proceed *in forma pauperis* is granted in a separate order. The Court now reviews Plaintiff's complaint.

DISCUSSION

I. Preliminary Review of Complaint

A federal court must conduct a preliminary screening in any case in which a prisoner seeks redress from a governmental entity or officer or employee of a governmental entity. 28 U.S.C. § 1915A(a). In its review, the court must identify any cognizable claims and dismiss any claims that are frivolous, malicious, fail to state a claim upon which relief may be granted or seek monetary relief from a defendant who is immune from such relief. *Id.* § 1915A(b)(1), (2). *Pro se* pleadings must be liberally construed. *Balistreri v. Pacifica Police Dep't*, 901 F.2d 696, 699 (9th Cir. 1988).

Federal Rule of Civil Procedure 8(a)(2) requires only "a short and plain statement of the

claim showing that the pleader is entitled to relief.” “Specific facts are not necessary; the statement need only ““give the defendant fair notice of what the . . . claim is and the grounds upon which it rests.”” *Erickson v. Pardus*, 551 U.S. 89, 93 (2007) (citations omitted).

To state a claim under 42 U.S.C. § 1983, a plaintiff must allege two essential elements: (1) that a right secured by the Constitution or laws of the United States was violated, and (2) that the alleged violation was committed by a person acting under the color of state law. *West v. Atkins*, 487 U.S. 42, 48 (1988).

Liability may be imposed on an individual defendant under 42 U.S.C. § 1983 if the plaintiff can show that the defendant’s actions both actually and proximately caused the deprivation of a federally protected right. *Lemire v. Cal. Dept. Corrections & Rehabilitation*, 756 F.3d 1062, 1074 (9th Cir. 2013); *Leer v. Murphy*, 844 F.2d 628, 634 (9th Cir. 1988).

II. Plaintiff’s Claims

Plaintiff’s complaint alleges the following: Plaintiff is a transgender individual. Officer Valencia discriminates against Plaintiff on the basis of her gender. For instance, Officer Valencia harasses Plaintiff on a daily basis by calling her “bitches/gay, fags and boys” and tells other inmates how Plaintiff was raped. Valencia has put Plaintiff “on the wall” and dug her nails into Plaintiff’s right arm.

Liberally construed, the allegations appear to give rise to a cognizable Fourteenth Amendment equal protection claim and a cognizable Eighth Amendment excessive force claim.

CONCLUSION

Based on the foregoing, the Court issues the following Orders:

1. Liberally construed, the allegations appear to give rise to a cognizable Fourteenth Amendment equal protection claim and a cognizable Eighth Amendment excessive force claim against Officer Valencia.

2. The Clerk of the Court shall mail a Notice of Lawsuit and Request for Waiver of Service of Summons, two copies of the Waiver of Service of Summons, a copy of the complaint (docket no. 1) and all attachments thereto, a copy of this Order, and a copy of the form “Consent or Declination to Magistrate Judge Jurisdiction” to Officer L. Valencia at Salinas Valley State

1 Prison. This form can also be found at www.cand.uscourts.gov/civilforms. The Clerk shall also
2 mail a copy of the complaint and a copy of this Order to the State Attorney General's Office in
3 San Francisco, and a copy of this Order to Plaintiff.

4 3. Defendant is cautioned that Rule 4 of the Federal Rules of Civil Procedure requires him
5 to cooperate in saving unnecessary costs of service of the summons and complaint. Pursuant to
6 Rule 4, if Defendant, after being notified of this action and asked by the Court, on behalf of
7 Plaintiff, to waive service of the summons, fails to do so, he will be required to bear the cost of
8 such service unless good cause be shown for his failure to sign and return the waiver forms. If
9 service is waived, this action will proceed as if Defendant had been served on the date that the
10 waiver is filed, except that pursuant to Rule 12(a)(1)(A)(ii), Defendant will not be required to
11 serve and file an answer before sixty days from the date on which the request for waiver was sent.
12 (This allows a longer time to respond than would be required if formal service of summons is
13 necessary.)

14 Defendant is advised to read the statement set forth at the foot of the waiver form that more
15 completely describes the duties of the parties with regard to waiver of service of the summons. If
16 service is waived after the date provided in the Notice but before Defendant has been personally
17 served, the answer shall be due sixty days from the date on which the request for waiver was sent
18 or twenty days from the date the waiver form is filed, whichever is later.

19 4. Defendant shall file his Consent or Declination to Magistrate Judge Jurisdiction on or
20 before the date his answer is due.

21 5. The following briefing schedule shall govern dispositive motions in this action:

22 a. No later than thirty days from the date his answer is due, Defendant shall file a
23 motion for summary judgment or other dispositive motion. If Defendant files a motion for
24 summary judgment, it shall be supported by adequate factual documentation and shall conform in
25 all respects to Federal Rule of Civil Procedure 56. If Defendant is of the opinion that this case
26 cannot be resolved by summary judgment, he shall so inform the Court prior to the date the
27 summary judgment motion is due. All papers filed with the Court shall be promptly served on
28 Plaintiff.

At the time of filing the motion for summary judgment or other dispositive motion, Defendant shall comply with the Ninth Circuit's decision in *Woods v. Carey*, 684 F.3d 934 (9th Cir. 2012), and provide Plaintiff with notice of what is required of him to oppose a summary judgment motion. If the motion is based on non-exhaustion of administrative remedies, Defendants must comply with the notice and procedural requirements in *Albino v. Baca*, 747 F.3d 1162 (9th Cir. 2014). *See Stratton v. Buck*, 697 F.3d 1004, 1008 (9th Cir. 2012).

b. Plaintiff's opposition to the motion for summary judgment or other dispositive motion shall be filed with the Court and served on Defendant no later than twenty-eight days after the date on which Defendant's motion is filed. The Ninth Circuit has held that the following notice should be given to *pro se* plaintiffs facing a summary judgment motion:

The defendants have made a motion for summary judgment by which they seek to have your case dismissed. A motion for summary judgment under Rule 56 of the Federal Rules of Civil Procedure will, if granted, end your case.

Rule 56 tells you what you must do in order to oppose a motion for summary judgment. Generally, summary judgment must be granted when there is no genuine issue of material fact -- that is, if there is no real dispute about any fact that would affect the result of your case, the party who asked for summary judgment is entitled to judgment as a matter of law, which will end your case. When a party you are suing makes a motion for summary judgment that is properly supported by declarations (or other sworn testimony), you cannot simply rely on what your complaint says. Instead, you must set out specific facts in declarations, depositions, answers to interrogatories, or authenticated documents, as provided in Rule 56(e), that contradict the facts shown in the defendant's declarations and documents and show that there is a genuine issue of material fact for trial. If you do not submit your own evidence in opposition, summary judgment, if appropriate, may be entered against you. If summary judgment is granted [in favor of the defendants], your case will be dismissed and there will be no trial.

Rand v. Rowland, 154 F.3d 952, 962-63 (9th Cir. 1998) (en banc).

Before filing his opposition, Plaintiff is advised to read the notice that will be provided to him by Defendant when the motion is filed, and Rule 56 of the Federal Rules of Civil Procedure and *Celotex Corp. v. Catrett*, 477 U.S. 317 (1986) (party opposing summary judgment must come forward with evidence showing triable issues of material fact on every essential element of his claim). Plaintiff is cautioned that because he bears the burden of proving his allegations in this case, he must be prepared to produce evidence in support of those allegations when he files his opposition to Defendant's summary judgment motion. Such evidence may include sworn

1 declarations from himself and other witnesses to the incident, copies of documents authenticated
2 by sworn declaration or discovery. Plaintiff will not be able to avoid summary judgment simply
3 by repeating the allegations of his complaint.

4 The same evidentiary requirement applies if the defendants file a motion for summary
5 judgment for failure to exhaust administrative remedies. To oppose this motion, Plaintiff must
6 present any evidence he may have which tends to show that he did exhaust administrative
7 remedies or was excused from doing so. Again, the evidence may be in the form of declarations,
8 that is statements of fact from himself or other witnesses signed under penalty of perjury, copies of
9 documents accompanied by a declaration showing where they came from and why they are
10 authentic, or discovery documents such as answers to interrogatories or depositions. In
11 considering a summary judgment motion for failure to exhaust administrative remedies, the Court
12 can decide disputed issues of fact with regard to this portion of the case. *See generally Albino,*
13 *747 F.3d at 1172-73; Stratton, 697 F.3d at 1008.*

14 c. Defendant shall file a reply brief no later than fourteen days after the date
15 Plaintiff's opposition is filed.

16 d. The motion shall be deemed submitted as of the date the reply brief is due. No
17 hearing will be held on the motion unless the Court so orders at a later date.

18 6. Discovery may be taken in this action in accordance with the Federal Rules of Civil
19 Procedure. No further court order pursuant to Rule 30(a)(2) or Local Rule 16 is required before
20 the parties may conduct discovery.

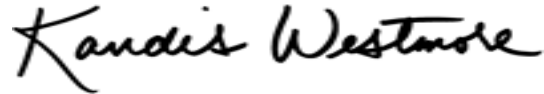
21 7. All communications by Plaintiff with the Court must be served on Defendant, or
22 Defendant's counsel once counsel has been designated, by mailing a true copy of the document to
23 Defendant or his counsel.

24 8. It is Plaintiff's responsibility to prosecute this case. Plaintiff must keep the Court
25 informed of any change of address by filing a separate paper with the clerk headed "Notice of
26 Change of Address," and must comply with the Court's orders in a timely fashion. Failure to do so
27 may result in the dismissal of this action for failure to prosecute pursuant to Federal Rule of Civil
28 Procedure 41(b).

1 9. Extensions of time are not favored, though reasonable extensions will be granted. Any
2 motion for an extension of time must be filed no later than three days prior to the deadline sought
3 to be extended.

4
5 IT IS SO ORDERED.

6 Dated: May 6, 2017



KANDIS A. WESTMORE
United States Magistrate Judge